

103D CONGRESS
1ST SESSION

S. 25

To protect the reproductive rights of women, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 21 (legislative day, JANUARY 5), 1993

Mr. MITCHELL (for himself, Mr. AKAKA, Mr. BAUCUS, Mr. BIDEN, Mr. BINGAMAN, Mr. BOREN, Mrs. BOXER, Mr. BRADLEY, Mr. BRYAN, Mr. CAMPBELL, Mr. CHAFEE, Mr. COHEN, Mr. DODD, Mr. FEINGOLD, Ms. FEINSTEIN, Mr. GLENN, Mr. HARKIN, Mr. INOUE, Mr. JEFFORDS, Mr. KENNEDY, Mr. KERRY, Mr. KERREY, Mr. KOHL, Mr. LAUTENBERG, Mr. LEAHY, Mr. LEVIN, Mr. LIEBERMAN, Mr. METZENBAUM, Ms. MIKULSKI, Ms. MOSELEY-BRAUN, Mr. MOYNIHAN, Ms. MURRAY, Mr. PACKWOOD, Mr. PELL, Mr. RIEGLE, Mr. ROBB, Mr. SARBANES, Mr. SIMON, Mr. SPECTER, and Mr. WELLSTONE) introduced the following bill; which was read twice and referred to the Committee on Labor and Human Resources

A BILL

To protect the reproductive rights of women, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Freedom of Choice
5 Act of 1993”.

1 **SEC. 2. CONGRESSIONAL STATEMENT OF FINDINGS AND**
2 **PURPOSE.**

3 (a) FINDINGS.—Congress finds the following:

4 (1) The 1973 Supreme Court decision in *Roe v.*
5 *Wade* established constitutionally based limits on the
6 power of States to restrict the right of a woman to
7 choose to terminate a pregnancy. Under the strict
8 scrutiny standard enunciated in *Roe v. Wade*, States
9 were required to demonstrate that laws restricting
10 the right of a woman to choose to terminate a preg-
11 nancy were the least restrictive means available to
12 achieve a compelling State interest. Since 1989, the
13 Supreme Court has no longer applied the strict scru-
14 tiny standard in reviewing challenges to the constitu-
15 tionality of State laws restricting such rights.

16 (2) As a result of the Supreme Court's recent
17 modification of the strict scrutiny standard enun-
18 ciated in *Roe v. Wade*, certain States have restricted
19 the right of women to choose to terminate a preg-
20 nancy or to utilize some forms of contraception, and
21 these restrictions operate cumulatively to—

22 (A)(i) increase the number of illegal or
23 medically less safe abortions, often resulting in
24 physical impairment, loss of reproductive capac-
25 ity or death to the women involved;

1 (ii) burden interstate commerce by forcing
2 women to travel from States in which legal bar-
3 riers render contraception or abortion unavail-
4 able or unsafe to other States or foreign na-
5 tions;

6 (iii) interfere with freedom of travel be-
7 tween and among the various States;

8 (iv) burden the medical and economic re-
9 sources of States that continue to provide
10 women with access to safe and legal abortion;
11 and

12 (v) interfere with the ability of medical
13 professionals to provide health services;

14 (B) obstruct access to and use of contra-
15 ceptive and other medical techniques that are
16 part of interstate and international commerce;

17 (C) discriminate between women who are
18 able to afford interstate and international travel
19 and women who are not, a disproportionate
20 number of whom belong to racial or ethnic mi-
21 norities; and

22 (D) infringe upon women's ability to exer-
23 cise full enjoyment of rights secured to them by
24 Federal and State law, both statutory and con-
25 stitutional.

1 (3) Although Congress may not by legislation
2 create constitutional rights, it may, where authorized
3 by its enumerated powers and not prohibited by a
4 constitutional provision, enact legislation to create
5 and secure statutory rights in areas of legitimate na-
6 tional concern.

7 (4) Congress has the affirmative power both
8 under section 8 of article I of the Constitution of the
9 United States and under section 5 of the Fourteenth
10 Amendment of the Constitution to enact legislation
11 to prohibit State interference with interstate com-
12 merce, liberty or equal protection of the laws.

13 (b) PURPOSE.—It is the purpose of this Act to estab-
14 lish, as a statutory matter, limitations upon the power of
15 States to restrict the freedom of a woman to terminate
16 a pregnancy in order to achieve the same limitations as
17 provided, as a constitutional matter, under the strict scru-
18 tiny standard of review enunciated in *Roe v. Wade* and
19 applied in subsequent cases from 1973 to 1988.

20 **SEC. 3. FREEDOM TO CHOOSE.**

21 (a) IN GENERAL.—A State—

22 (1) may not restrict the freedom of a woman to
23 choose whether or not to terminate a pregnancy be-
24 fore fetal viability;

1 (2) may restrict the freedom of a woman to
2 choose whether or not to terminate a pregnancy
3 after fetal viability unless such a termination is nec-
4 essary to preserve the life or health of the woman;
5 and

6 (3) may impose requirements on the perform-
7 ance of abortion procedures if such requirements are
8 medically necessary to protect the health of women
9 undergoing such procedures.

10 (b) RULES OF CONSTRUCTION.—Nothing in this Act
11 shall be construed to—

12 (1) prevent a State from protecting unwilling
13 individuals or private health care institutions from
14 having to participate in the performance of abortions
15 to which they are conscientiously opposed;

16 (2) prevent a State from declining to pay for
17 the performance of abortions; or

18 (3) prevent a State from requiring a minor to
19 involve a parent, guardian, or other responsible
20 adult before terminating a pregnancy.

21 **SEC. 4. DEFINITION OF STATE.**

22 As used in this Act, the term “State” includes the
23 District of Columbia, the Commonwealth of Puerto Rico,
24 and each other territory or possession of the United
25 States.

